IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Julius Robson et al.	§	Art Unit:	2617
		§		
Serial No.:	10/718,412	§		
		§	Examiner:	Un C. Cho
Filed:	November 19, 2003	§		
		§		
For:	Method of Resource Allocation in a Multiple Access Wireless Communications Network	§	Atty. Dkt. No.:	16125IDUS01U (NRT.0215US)
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Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

Independent claim 1 was erroneously rejected as being obvious over "admitted prior art" (APA) in view of Sato.

The Office Action conceded that APA does not disclose the following feature of claim 1: "establishing a number of resource units making up a fixed allocation of resource units, **said fixed allocation of units being the same for all user equipments of the network**." 7/29/2008 Office Action at 2. Instead, the Office Action cited Sato as purportedly disclosing this claim feature missing from APA. Specifically, the Office Action cited Table 6 on page 7 of Sato, as well as ¶¶ [0123]-[0139] on pages 8-9 of Sato, which refer to Table 6.

Note that Table 6 of Sato refers to allocations of various control channels, including a Pilot channel, Sync channel, Paging channel, and Access channel, to different **sectors** of a cell (**sectors** A, B, C). The control channel allocation to sectors depends on the number of base band

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signal processing blocks disposed (Sato, ¶ [0112]), where the base band signal processing blocks are disposed in a base station (*see* Fig. 5 of Sato, and ¶ [0004]). Thus, Table 6 describes allocating a number of channels to **sectors** that depend upon base band signal processing blocks within **a base station**. This teaching of Sato has absolutely nothing to do with a fixed allocation of resource units being the **same** for **all user equipments** of the network. Therefore, even if APA and Sato could be hypothetically combined, the hypothetical combination of the references would not have led to the claimed subject matter.

Moreover, it is clear that a person of ordinary skill in the art would not have been prompted to combine the teachings of APA and Sato to achieve the claimed invention. As the U.S. Supreme Court has held, it is **important** to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007). As specifically taught by the APA, "the number of resource units allocated to a child user equipment is dependent on the number of other child user equipments in that partition and so the number of resource units allocated to the child user equipments **varies** from partition to partition." Specification, p. 2, lines 7-10 (emphasis added). Thus, APA specifically **teaches away** from the invention, since APA teaches that a conventional technique allocates different numbers of resource units to different child user equipments between different partitions, based on the number of child user equipments present in the partition. APA specifically would have led a person of ordinary skill in the art away from providing a **fixed** allocation of resource units that is the **same** for **all** user equipments of the network.

Moreover, as explained above, Sato teaches subject matter that is significantly different from the subject matter of claim 1; namely, Sato refers to allocation of control channels **to sectors** depending upon base band signal processing blocks in a base station, which has nothing to do with a fixed allocation of resource units being the same **for all user equipments** of the network.

Thus, in view of the foregoing, it is clear that a person of ordinary skill in the art would not have been prompted to combine the teachings of APA and Sato to achieve the subject matter of claim 1. The obviousness rejection of claim 1 over APA and Sato is therefore clearly defective.

Similarly, the obviousness rejection of independent claims 15, 24, 37, and 38 over APA and Sato is also defective.

Independent claim 33 was rejected as being purportedly obvious over APA, Sato, and Wu. The rejection of claim 33 is based on the same erroneous application of APA and Sato to the following subject matter of claim 33: "said fixed allocation of resource units being the same for all user equipments of the network." In view of the fact that APA and Sato clearly would not have led a person of ordinary skill in the art to the above identified feature of claim 33, the obviousness rejection of claim 33 over APA, Sato, and Wu is also defective.

Wu was cited by the Office Action as purportedly disclosing determining a measure of a maximum likely number of child user equipments per network partition, and determining a fixed allocation of resource units based on the ratio of a number of resource units in the link per unit time to the measure. 7/29/2008 Office Action at 3. However, Wu provides no teaching or hint of a fixed allocation of resource units being the same for all user equipments of the network, as recited in claim 33. In fact, Wu teaches away from the claimed subject matter by providing a system where "unequal bandwidths are allocated to different users in a given sector." Wu also refers to potentially unequal subsets of assigned bandwidths in a given sector being assigned to users using an optimization process. Wu, ¶¶ [0070], [0071], [0086]. These are further reasons that a person of ordinary skill in the art would not have been prompted to combine APA, Sato, and Wu.

In view of the foregoing, the obviousness rejection of claim 33 is clearly defective.

The obviousness rejections of independent claims 34, 35, and 39 are also similarly defective.

Independent claim 40 was rejected as purportedly obvious over APA, Sato, and Hwang. The obviousness rejection of claim 40 is also defective in view of the mis-application of APA and Sato as purportedly disclosing a fixed allocation of resource units being the same for all user equipments of the network.

Moreover, the Office Action cited Hwang as purportedly disclosing determining the gain of the radio link between the partition and each child user equipment, and allocating the remaining resource units among the child user equipments by prioritizing user equipments having a high gain link. 7/29/2008 Office Action at 7. However, Hwang fails to disclose a fixed allocation of resource units being the same for all user equipments of the network. In fact,

Hwang teaches away from the present invention by providing a system where "frequency resources are assigned to a mobile station (MS) according to one of the distance between the MS and a BS, received signal strength, or interference from adjacent BSs." Hwang, ¶ [0065]. This is a further reason that a person of ordinary skill in the art would not have been prompted to combine APA, Sato, and Hwang. Therefore, the obviousness rejection of claim 40 is also clearly defective.

Independent claim 36 was rejected as purportedly obvious over Wu, Sato, and Hwang. The obviousness rejection of claim 36 is defective for similar reasons as stated above for claim 40.

In view of the foregoing, withdrawal of all final rejections and allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 20-1504 (NRT.0215US).

Respectfully submitted,

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Dan C. Hu
Registration No. 40,025
TROP, PRUNER & HU, P.C.
1616 South Voss Road, Suite 750
Houston, TX 77057-2631
Telephone: (713) 468-8880
Facsimile: (713) 468-8883